IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.1268 OF 2005

WITH

FIRST APPEAL NO.335 OF 1999.

Chandrakant Narayan Sawant : Appellant.

versus

Mr.Irfan Ismail Darji & Anr. : Respondents.

Mr.Sachin Shetye for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 7th April 2005.

ORAL ORDER

1. So far as the civil application is concerned, it is for restoration of the appeal which was dismissed by me on 10.03.2005 for default. Sufficient cause is shown for the absence. Hence civil application is allowed. Appeal is restored to file and taken up for final

hearing. Civil Application is disposed of.

2. Heard advocate for the appellant/original applicant. Respondents are served. Nobody is present for the respondents. The appellant had filed a claim petition before the Motor Accidents Claims Tribunal Raigad at Alibag claiming compensation of Rs.Three lacs. That petition was partly allowed and the compensation was fixed at Rs.2,22,760/-. But the tribunal awarded 60% of that amount only to the claimant. Hence this appeal.

3. The accident occurred on 20.5.1994 at about 8.45 p.m. The applicant/claimant was going on his bicycle. The road by which he was going on was north south road. He was going from South to North. A truck bearing No.MTT 6723 came from the opposite direction and an Ambassador was stationary on the road to the eastern side. The truck was in a high speed. It dashed against the bicycle and the driver of the truck ran away from the spot. The right leg of the applicant/claimant came under the rear wheel of the truck and he sustained injuries.

4. The tribunal held the truck driver responsible. There is no cross appeal by the respondents. Therefore, those findings are required to be upheld or cannot be disturbed.

5. The counsel for the appellant contended that there was no material on record to hold that the applicant/claimant was responsible to the extent of 40%. The applicant/claimant examined himself, whereas neither the truck owner nor the truck driver remained present and, the matter proceeded exparte against them. If this is so, then it was clear that either the truck owner or the truck driver had no defence or that they did not want to contest the matter. In that case there was no reason for the tribunal to hold the applicant/claimant guilty of contributory negligence to the extent of 40%. The finding and the conclusion of the tribunal are therefore perverse. They are required to be set aside. Hence the order:-

:ORDER:

Appeal is partly allowed.

The order of the Motor Accident Claims Tribunal, Raigad at Alibag dated 2.5.1997 is modified and the respondents shall pay full amount of Rs.2,22,760/- with interest thereon at the rate of 12% p.a. and also the costs before the lower court as well as this Court.

Amount already paid shall be adjusted towards the aforesaid award.

Certified copy expedited.

[D.G.DESHPANDE]

07/04/2005 JUDGE.